

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUBEN FIGUEROA,

Plaintiff,

v.

NAVARRO, et al.,

Defendants.

Case No. 1:20-cv-01254-AWI-SKO (PC)

**ORDER GRANTING DEFENDANTS'
MOTION FOR EXTENSION OF TIME TO
MODIFY SCHEDULING ORDER *NUNC
PRO TUNC***

(Doc. 40)

**ORDER GRANTING DEFENDANTS'
MOTION TO MODIFY SCHEDULING
ORDER**

(Doc. 41)

Plaintiff Ruben Figueroa is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action.

On July 22, 2022, Defendants Phi, Ramirez and Navarro filed a request for extension of time to file a motion to modify the scheduling order *nunc pro tunc*. (Doc. 40.) That same date, Defendants filed a motion to modify the scheduling order. (Doc. 41.) Although the deadline for filing an opposition to either motion has not yet passed, the Court finds any response unnecessary to its determination.

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1 **I. DISCUSSION AND ORDERS**

2 **A. Request for Extension of Time *Nunc Pro Tunc* (Doc. 40)**

3 In the request for an extension of time to file a motion to modify the scheduling order
 4 *nunc pro tunc* (Doc. 40), counsel for Defendants states “that due to administrative error in the
 5 calendaring of deadlines, Defendants ha[ve] not yet filed their dispositive motion or a motion
 6 seeking an extension to time” of the July 21, 2022 deadline. (Doc. 40 at 3, ¶¶ 2-3.) Counsel states
 7 the failure to file a motion to modify the scheduling order was “the result of inadvertence,” and
 8 the motion had “been drafted and ready for nearly two weeks,” despite not having been filed with
 9 the Court. (*Id.* at ¶ 4.) Counsel does not believe Plaintiff will be prejudiced by the extension as
 10 the parties “have been maintaining contact regarding potential settlement of the case.” (*Id.*)
 11 Counsel seeks an extension to file the motion to modify the scheduling order to July 22, 2022.
 12 (*Id.*) Counsel indicates the request is not made to delay this litigation, prejudice Plaintiff, or for
 13 any other improper purpose. (*Id.* at ¶ 5.)

14 Good cause appearing, Defendants’ request for an extension of time to file a motion to
 15 modify the scheduling order *nunc pro tunc* (Doc. 40), to July 22, 2022, is **GRANTED**.

16 **B. Motion to Modify the Scheduling Order (Doc. 41)**

17 Defendants move to “continue all current deadlines in the Scheduling Order by sixty (60)
 18 days” and propose the deadlines be modified as follows:

19 Exhaustion motion deadline: September 9, 2022¹

20 Deadline to amend pleadings: October 18, 2022

21 Discovery cut-off deadline: November 20, 2022

22 Dispositive motion deadline: January 20, 2023

23 (See Doc. 41 at 1, 5.) Defendants contend settlement negotiations are ongoing, having resumed
 24 following defense counsel’s recent return following a three-month leave of absence. (*Id.* at 3.)
 25 Defendants indicate defense counsel “is actively analyzing Plaintiff’s claims, evaluating the case,
 26 and seeking settlement authority to resolve this matter without the need for further litigation.”

27
 28 ¹ September 9, 2022 is believed to be typographical error. Sixty days from the original deadline (7/21/22)
 in the Discovery and Scheduling Order is September 19, 2022.

(*Id.*) Defendants indicate “Plaintiff has expressed his strong interest in settlement,” and that despite differences in valuation, “it is expected that the parties will reach consensus during additional negotiations.” (*Id.*) Defendants note that during a July 13, 2022, telephonic meet and confer, “Plaintiff was amenable to the instant request to modify the Scheduling Order.” (*Id.*)

Defendants “would like to focus their efforts on settlements without devoting resources to simultaneously litigating” this case; however, in the event settlement negotiations fail or an exhaustion motion becomes necessary to further narrow claims and defendants, “the parties wish to preserve their right” by seeking the requested extensions. (Doc. 41 at 3-4.) Alternatively, Defendants contend the Court could stay the current deadlines and issue a new order after August 8, 2022—the date by which “Defendants will inform the Court about the status of settlement negotiations.” (*Id.* at 4-5.)

Good cause appearing, Defendants’ motion to modify the scheduling order (Doc. 41) is **GRANTED**. The Discovery and Scheduling Order issued April 21, 2022 is **MODIFIED** as follows:

Exhaustion motion deadline: **September 19, 2022**

Deadline to amend pleadings: **October 18, 2022**

Discovery cut-off deadline: **November 20, 2022**

Dispositive motion deadline: **January 20, 2023**

Defendants **SHALL** notify the Court no later than August 8, 2022, as to whether settlement negotiations were successful.

IT IS SO ORDERED.

Dated: **August 1, 2022**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE